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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ITA-710-2009(O&M)
Date of Decision: 05.12.2024

CIT Panchkula Appellant

Vs.

M/s Haryana Vidyut Prasaran Nigam Ltd. . . . Respondent

CORAM: HON’BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON’BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Saurabh Kapoor, Sr. Standing Counsel and
Ms. Pridhi Sandhu, Jr. Standing Counsel
Ms. Muskaan Gupta, Advocate for the appellant.

None for the respondent.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. Appellant assails the order dated 31.03.2009 passed by the Income Tax Appellate Tribunal, Chandigarh Bench ‘A’ (for short, ‘ITAT’), whereby two appeals bearing ITA No. 78/chd/2008 and ITA No.100/chd/2008 for the assessment year 1999-2000 were decided following the judgment passed by this Court in case of ‘*CIT Vs. Punjab Financial Corporation Ltd*’, 295 ITR 510 (P&H), wherein this Court held as under:

“(iii) That it was not disputed that the assessee had contributed to the provident fund for its employees under the Provident Fund Act, 1925. Further, it could not be disputed that the expense was made wholly and exclusively for the purpose of business and was neither



capital in nature nor personal. Section 36(1) (iv) of the Act does not specifically debar deduction on account of contribution made under the Provident Fund Act, 1925. It only talks about grant of deduction in respect of recognized provident fund. The contribution to the unrecognized provident fund was deductible.”

2. While admitting the appeal, following questions of law have been framed by this Court :

“(i) Whether on the facts and in the circumstances of the case, learned ITAT was right in law in relying upon the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Punjab Financial Corporation Ltd. Reported in 295 ITR 510 (P & H) and deleting the addition of Rs.30,02,13,163/- made on account of contributions to unrecognised provident fund and unapproved pension fund, ignoring the submission of the revenue that there was no proof that the impugned claim by the assessee was as per the Provident Funds Act, 1925?

(ii) Whether on the facts and in the circumstances of the case, learned ITAT was right in law in ignoring the ratio of the judgment of Hon'ble Delhi High Court in the case of Sony India P. Ltd. vs. CIT reported in 285 ITR 213 (Del.) in which it was held that allowance of an expenditure of the nature described in Section 36(1)(iv) of the Income Tax Act, 1961 under Section 37(1) would render nugatory the conditions and limitations subject to which the provisions of Section 30 to 36 make the deductions envisaged therein admissible?



(iii) Whether on the facts and in the circumstances of the case, learned ITAT was right in law in upholding the order of CIT(A) that liability payable by the assessee on account of electricity duty payable can be set off by way of allotment of equity shares and that it amounts to discharging of liability u/s 43B of the IT Act, 1961, which requires that liability has to be "actually paid" by the assessee?"

3. The ITAT vide its judgment also noticed the view taken by the Gujrat High Court in case, '**Decom Marketing Pvt. Ltd. Vs. CIT**', 251 ITR 398(Guj), that the contributions made to the Provident Fund Act, 1925 would therefore, be eligible for registration and as the Trust of the assessee Corporation was duly recognized by CIT vide its letter dated 23/27.09.1999. The assessee had duly discharged its onus, the appeal therefore of the assessee is found to have been allowed rightfully and the question of law as framed by this Court (i) is answered in favour of assessee.

4. With regard to question No.(ii) it appears that this Court framed the aforesaid question of law based on the judgment of Delhi High Court in case, '**Sony India P.Ltd Vs. CIT**', 285 ITR 213 (Del), which held that such expenditure while depositing amount in Provident Fund, is not allowable.

5. We notice that the judgment passed by the Delhi High Court has failed to take notice of the judgment passed by this Court in case '**CIT Vs. Punjab Financial Corporation (supra)**' and therefore, a different view was taken by the Delhi High Court and the same could not be binding upon this Court as it is a settled law that earlier judgment passed by this Court would have a



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binding precedential value over and above any different view taken by any other High Court. The law has been settled by the Supreme Court in '**Official Liquidator Vs. Dayanand**', 2008(10) SCC 1, wherein it was held as under:

“66. In State of Bihar v. Kalika Kuer and others [2003 (5) SCC 448], the Court elaborately considered the principle of per incuriam and held that the earlier judgment by a larger Bench cannot be ignored by invoking the principle of per incuriam and the only course open to the coordinate or smaller Bench is to make a request for reference to the larger Bench. In State of Punjab v. Devans Modern Breweries Ltd. [2004 (11) SCC 26], the Court reiterated that if a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter has to be referred to a larger Bench. In Central Board of Dwaoodi Bohra Community v. State of Maharashtra [2005 (2) SCC 673], the Constitution Bench interpreted Article 141, referred to various earlier judgments including Bharat Petroleum Corpn. Ltd. v. Mumbai Shramik Sangha (supra), Pradip Chandra Parija and others v. Pramod Chandra Patnaik and others (supra) and held that "the law laid down in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength and it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division Benches of three Judges. The Court further held that such a practice would be detrimental not only to the rule of discipline and the doctrine of binding precedents but it will also lead to inconsistency in decisions on the point of law; consistency and certainty in the development of law and its contemporary status - both would be immediate casualty"

Keeping in view thereto question No. (ii) is also answered in favour of the assessee and against the appellant.



6. As regards to question No.3, whether the electricity duty payable by the assessee on account of treating as set off by way of allotment of equity shares and thereby discharging the liability under Section 43B of the IT Act, 1961 is concerned, we noticed that ITAT considered the appeal preferred by the revenue and observed as under:

“Brief facts are that original return was filed on 29.12.1999 which was processed under section 143(1)(a) of the Act on 18.12.2000. The assessee subsequently filed revised return on 30.3.2001. It was noticed by the learned Assessing Officer, from the return, that there is an un-discharged liability of Rs. 27,04,46,079/- on account of electricity payable. The assessee was asked to explain as to why the same may not be added under section 43B of the Act. The assessee claimed that the Government of Haryana endorsed the sanction of release/allotment of equity of 52.41 crores vide letter dated 30.3.1999 against electricity duty payable by the assessee company (copy of the letter dated 30.3.1999 is available on record which was duly considered by the learned first appellate authority). After adjustment a sum for Rs. 16,95,53,921/- became recoverable from the State government which was shown in Schedule XIII. As per this letter, a sum of Rs. 44 crores granted as equity was to be adjusted against the electricity duty payable to the Government of Haryana. Since, the liability on account of electricity duty has been discharged by way of



allotment of shares, the case laws relied upon by the Revenue, therefore, are not applicable to the facts of the present appeal, consequently in our view, there is no infirmity in the impugned order.”

7. Section 43B of the IT Act, 1961 as it stood at that relevant time, reads as under:

“Certain deductions to be only on actual payment

43B *Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of-*

(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or

(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or

(c) any sum referred to in clause(ii) of sub-section(1) of section 36, or

(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State financial Corporation or a State industrial investment corporation, in accordance with the terms and



conditions of the agreement governing such loan or borrowing, or

(da) xxxx

(e) any sum payable by the assessee as interest on any loan or advances from a scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank in accordance with the terms and conditions of the agreement governing such loan or advances, or

(f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee, or

(g) xxx

(h) xxx

Provided that nothing contained in this Section except the provisions of clause(h) shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.

Explanation 1-For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause(a) or clause(b) of this section is allowed in computing the



income referred to in Section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1983, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this Section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.

Explanation 2- *For the purposes of clause(a), as in force at all material times, “any sum payable” means a sum for which the assessee incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law.*

Explanation 3- *For the removal of doubts it is hereby declared that where a deduction in respect of any sum referred to in clause(c) or clause (d) of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.*

Explanation 3A- *For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in*



clause(e) of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1996, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid to him.

Explanation 3AA xxxxxx

Explanation 3B-*For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (f) of this section is allowed in computing the income, referred to in section 28, of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 2001, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this Section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.*

Explanation 3C-*For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (d) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or borrowing or debenture*



or any other instrument by which the liability to pay is deferred to a future date shall not be deemed to have been actually paid.

Explanation 3CA-xxxxxx

Explanation 3D- *For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause(e) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or advance or debenture or any other instrument by which the liability to pay is deferred to a future date shall not be deemed to have been actually paid.*

Explanation 4- *For the purpose of this section,-*

(a) *“public financial institutions” shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956);*

(aa) *“scheduled bank” shall have the meaning assigned to it in the Explanation to clause (iii) of Sub Section (5) of section 11;*

(b) *“State financial corporation” means a financial corporation established under Section 3 or Section 3A or an institution notified under Section 46 of the State Financial Corporation Act, 1951 (63 of 1951);*

(c) *“State industrial investment corporation” means a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), engaged in the*



business of providing long-term finance for industrial projects and eligible for deduction under clause (viii) of sub-section (1) of section 36;

(d) “co-operative bank”, “primary agricultural credit society” and “primary co-operative agricultural and rural development bank” shall have the meanings respectively assigned to them in the Explanation to sub-section (4) of section 80 P;

(e) xxxx

(f) “non-banking financial company” shall have the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(g) “systemically important non-deposit taking non-banking financial company” means a non-banking financial company which is not accepting or holding public deposits and having total assets of not less than five hundred crore rupees as per the last audited balance sheet and is registered with the reserved Bank of India under the provisions of the Reserved Bank of India Act, 1934 (2 of 1934)

Following clause(g) shall be substituted for the existing clause (g) of Explanation 4 to section 43B by the Fianance Act, 2023, w.e.f. 1-4-2024:

(g) xxxxx



Explanation 5-xxxx”

The word ‘actually paid’ has been, therefore, used only in the proviso, while the explanation lays down circumstances where the deduction is not allowable.

8. Thus, as per the revised return filed by the assessee, the liability discharged towards the Government relating to Electricity duty was payable from the allotment of equity of Rs. 52.41 crores by Government of Haryana to the said extent, the same was adjusted i.e. Rs.44 Crores. The shares being part of the funds allotted by the Government of Haryana, the same cannot be said to have been acquired from other sources and was therefore, allowable in terms of Section 43 (d) of the IT Act, 1961, accordingly the present appeal is hereby dismissed.

9. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

December 05, 2024

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1. Whether speaking/reasoned?

Yes/No
2. Whether reportable?

Yes/No